



The Gazette of India

EXTRAORDINARY
PART II—Section 3
PUBLISHED BY AUTHORITY

No. 87] NEW DELHI, FRIDAY, APRIL 17, 1953

ELECTION COMMISSION, INDIA
NOTIFICATION S

New Delhi, the 9th April 1953

S. R. O. 696.—WHEREAS the election of Shri Wadhawa Ram, son of Shri Pathana Ram, village Lekhowali, District Ferozepore, as a member of the Legislative Assembly of Punjab, from Fazilka constituency has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Ram Chand, son of Shri Nihalchand, Ward No. 2, Fazilka Town ;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order on the said election petition ;

Now, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, LUDHIANA
Harbans Singh—Chairman.
Hans Raj Khanna.—Member.
Parma Nand Sachdeva—Member.

ELECTION PETITION NO. 137 OF 1952

Shri Ram Chand, son of Shri Nihal Chand, Caste Arora, resident of Fazilka, an elector in Fazilka Constituency of the Punjab Legislative Assembly entered as voter No. 1744, Ward No. 2, Fazilka Town—*Petitioner*

Versus

1. Shri Wadhawa Ram, son of Shri Pathana Ram, Caste Kamboh, resident of village Lekhowali, Tehsil Muktsar, District Ferozepore, member of the Punjab Legislative Assembly.
2. Shri Mukand Lal, son of R. S. L. Boolchand Ahuja, Caste Arora of Fazilka, District Ferozepore, who stood for election but was defeated.
3. Shri Sunam Rai, son of Shri Kanshi Ram, Caste Arora, resident of Fazilka, District Ferozepore, who stood for election but was defeated.
4. Shri Partap Singh, son of Shri Mehtab Singh, resident of village Ahal, P. O. Behak P. S. and Tehsil Fazilka, District Ferozepore, who stood for election but was defeated.
5. Sant Narinder Singh, son of Shri Kesar Singh, resident of village Ladhuwa, Post Office Ladhuwa, Tehsil Fazilka, District Ferozepore, who stood for election but was defeated.

6. Shri Fatta Singh, son of Shri Gehna Singh, Caste Rai Sikh, resident of village Behak Khas, Tehsil Fazilka, District Ferozepore, whose nomination papers were rejected.
7. Shri Sher Singh, son of Shri Hukam Singh, Caste Arora, resident of Jarnaili Kothi, Karnal, whose nomination papers were rejected.
8. Shri Munshi Ram adopted son of Shri Nathu Ram, Caste Arora, resident of Fazilka, District Ferozepore, who stood for election but withdrew his candidature.
9. Shri Uttam Singh, son of Shri Karam Singh of village Mullanwali, Post Office Jandwala, Bhimeshah, Tehsil Fazilka, District Ferozepore who stood for election but withdrew his candidature.
10. Shri Joginder Singh, son of Shri Mehtab Singh, resident of Mullanwali, Post Office Jandwala Bhimeshah, District Ferozepore, who stood for election but withdrew his candidature.
11. Shri Dogar Dass, son of Shri Sham Dass, Caste Arora, resident of Fazilka, District Ferozepore, who stood for election but withdrew his candidature.
12. Shri Chamba Ram, son of Shri Bahadur Ram, Caste Kamboh, resident of village Lalanwali, Tehsil Fazilka, District Ferozepore, who stood for election but withdrew his candidature.
13. Ch. Jagan Nath, son of Shri Ram Karan, caste Jat, resident of village Muthianwali, Tehsil Fazilka, who stood for election but withdrew his candidature.—*Respondents.*

ORDER

(PER HANS RAJ KHANNA, MEMBER).

Shri Wadhawa Ram, respondent No. 1, was elected to the Punjab Legislative Assembly from the Fazilka constituency in the general elections held in January, 1952.

The present election petition has been filed by Shri Ram Chand, an elector in the constituency, to question the election of Shri Wadhawa Ram. It is alleged by the petitioner that the election of respondent Shri Wadhawa Ram is void on account of the fact that the agents and other supporters of respondent No. 1 made appeals to voters of Kamboh caste to vote for respondent No. 1 on the basis of caste, community and religion. It is also alleged that the agents and supporters of respondent No. 1 held out false promises of free grant of agricultural land. It is further stated that the election was not free election by reason of the fact that corrupt practices of bribery and treating by liquor extensively prevailed throughout the constituency. The allegations of intimidation of voters by respondent No. 2 Shri Mukand Lal, who was one of the candidates, are also made. It is further stated that the election is void on account of the fact that Shri Mukand Lal, respondent No. 2, was one of the Proprietors of the shop, Rai Sahib Bool Chand Nathu Ram which was under a contract with the Punjab Government for the supply of wheat and other foodgrains. According to the petitioner this entailed as a disqualification for Shri Mukand Lal from standing as a candidate. It is stated that the improper acceptance of the nomination papers of Shri Mukand Lal has materially affected the result of the election. In another para it is alleged that the nomination papers of Shri Sher Singh, respondent No. 7, were improperly, illegally and wrongly rejected by the Returning Officer. The petitioner alleges that the Returning Officer rejected the nomination papers of respondent No. 7 on the ground that respondent No. 7 was a Member of the Karnal Rice Association. According to the petitioner, respondent No. 7 had ceased to be a Member of the Rice Association before the date of the filing of the nomination papers. It was pleaded in the alternative that even if respondent No. 7 was a member of the Association, this fact did not disqualify respondent No. 7 from standing as a candidate.

The election petition has been contested by respondent No. 1. The allegations of the petitioner have been controverted by the aforesaid respondent. It is also stated by respondent No. 1 that the list of particulars, supplied by the petitioner, was defective and not in accordance with law. After replication had been filed by the petitioner to the written statement of the respondent, the following three preliminary issues were framed :

1. Were the nomination papers of respondent No. 2 improperly and illegally accepted by the Returning Officer for the reasons detailed in paragraph 9 of the petition? If so, has it materially affected the result of the election?
2. Were the nomination papers of Shri Sher Singh, respondent No. 7, improperly and illegally rejected by the Returning Officer? If so, has this not materially affected the result of the election?
3. Do the particulars, given by the petitioner, not comply with the provisions of Section 83 of the Representation of the People Act, 1951, and if so, is any portion of the List liable to be struck off and should further particulars be ordered to be given in respect of the same?

Evidence was recorded on the preliminary issues. On 14-2-1953 it was held (*vide Annexure A*) by the Tribunal that we would defer the hearing of arguments and the pronouncement of orders on preliminary Issues Nos. 1 and 2, and that those issues would be taken up along with the issues on merits when framed. Arguments were then heard on issue No. 3 only. The Tribunal then dictated an order (*Annexure B*) on that very day by which the petitioner was called upon to furnish further information with regard to certain facts mentioned in the petition and the particulars attached therewith. After the Tribunal had dictated the order on Issue No. 3, the counsel and the Mukhtar-i-Khas of the petitioner made a statement, that it was not possible for the petitioner to substantiate the allegations of corrupt and illegal practices made in the petition, and that the petitioner would confine himself to the allegations on which the preliminary Issues Nos. 1 and 2 had been settled. In view of the above statement no issues were framed on merits and the present petition would now have to be disposed of on Issues Nos. 1 and 2 on which our findings are as under :—

Issue No. 1. — The allegation of the petitioner is that respondent No. 2 Shri Mukand Lal was a member of the joint Hindu family styled as Rai Sahib Bool Chand Nathu Ram. It was alleged that the joint Hindu family concern, Rai Sahib Bool Chand Nathu Ram, was under a contract with the Punjab Government for the supply of wheat and other foodgrains which disqualifies Shri Mukand Lal to stand as a candidate. The case of the petitioner is that the aforesaid firm was a member of the Pacca Ahritis Association which was in contract with the Government to purchase wheat and barley under Monopoly Scheme and to supply the same to the Government.

Shri Mukand Lal has however, appeared before us as P. W. 17 on behalf of the petitioner and has deposed that sometime before the filing of the nomination papers, he transferred the shares held by his firm in the New Fazilka Pacca Ahritis Association to the firm Nathu Ram Binwari Lal. The letter Ex. P. W. 14/A and the deed of transfer Ex. P. W. 14/C have also been placed on the file to show that Shri Mukand Lal had ceased to have any share in the New Fazilka Pacca Ahritis Association before the date of nomination. Another witness, cited by the petitioner, Shri Ram Kishen, who is a Manager of the Pacca Ahritis Association, has also deposed that Shri Mukand Lal had ceased to have any interest on 2-11-1951 in the Pacca Ahritis Association. In view of the above it cannot be said that Shri Mukand Lal, respondent No. 2, had any contract with him on the date of nomination for supply of wheat and other foodgrains which disqualified him to stand as a candidate. Indeed no arguments were addressed before us on behalf of the petitioner on this issue. Issue No. 1 is, therefore, decided against the petitioner.

Issue No. 2. — On Issue No. 2, the position, taken up by the petitioner, is that the firm Sher Singh and Co., of which Shri Sher Singh was a partner, had ceased to be a Member of the New Rice Association Karnal and that in any case the membership of the New Rice Association did not result in a disqualification for Shri Sher Singh. We shall deal with two aspects serially.

The petitioner has led evidence before the Tribunal to show that Shri Sher Singh was a Member of the New Rice Association, Karnal. This Association was formed on 20-9-1951. The firm, Sher Singh & Co., was one of the Members of the Association. Shri Sher Singh respondent is a partner of the firm Sher Singh & Co., Shri Sher Singh has deposed that on the 18th October, 1951, he sent a letter Ex. P. W. 1/A wherein he wrote to the President of the New Rice Association, Karnal that the firm Sher Singh & Co., was giving up its connection with the Association and that its contribution might be returned to the same. A meeting of the Association, it is alleged, was called on the 19th of October, 1951, and a resolution Ex. P. W. 1/C was passed on that day by which it was resolved that firm Sher Singh & Co., might be permitted to sever its connections with the Association and that the intimation with regard to that might be sent to the District Food Controller. The point at issue between the parties is whether this resolution that is alleged to have been passed on the 19th of October, 1951, was in fact passed on that day or whether it has been subsequently manoeuvred and ante-dated. In order to come to a correct conclusion on this question, we have to look to the course of events at the time of scrutiny.

The nomination papers were filed by the different candidates including Shri Sher Singh on the 5th November, 1951. On the 9th November, 1951, the date of scrutiny, an affidavit was filed by Shri Isher Dass R. W. 7 in which it was stated that Shri Sher Singh was the proprietor of firm Sher Singh & Co., and that firm Sher Singh & Co., was an authorized dealer and was a share-holder of the New Rice Association, Karnal, which had a contract for the supply of rice with the Government. It was also stated in that affidavit that firm Sher Singh & Co., was a share-holder of Pacca Ahritis Association, Karnal, which had a contract for the supply of wheat. It was further stated that Shri Sher Singh was a share-holder in a Society known as Nili Bar Society, District Karnal, which had taken a large area of land on lease from the Government. The Returning Officer, thereupon, passed a long order. It was ultimately ordered by the Returning Officer as under :

"I direct that by tomorrow, in case the position taken is a position of denial, a complete and clear affidavit should be submitted before 3 P. M. stating :

1. That Shri Sher Singh is not a member of Sher Singh & Co.
2. That Sher Singh and Co., as such, is not a member of the New Rice Association, Karnal and the Karnal Pacca Ahritis Association.

3. That S. Sher Singh has not taken any land under the Utilization of Lands Act from the D. C., Karnal, by himself or in the name of Nilbar Association of which he is a member.

This affidavit should specify that at no time these facts were true as against S. Sher Singh. If, at any time, these facts were true and if at some time S. Sher Singh had ceased to be a member of all the Associations mentioned above or had ceased to be a beneficiary under any of the concerns as discussed above, the exact date of such ceasing of interest should be clearly specified in the affidavit."

On the 10th November, 1951, Shri Sher Singh filed an affidavit in which he stated that there was no association in Karnal running under the name and style of Pacca Ahrtis Association, and that Shri Sher Singh was no member of any such Association. It was further stated that the New Rice Association was not a nominee of the Government nor was it appointed by the Government. It was further stated that 5 or 6 rice licencees had joined together to form that Association instead of carrying on business separately. It was also stated that they had no dealing with the Government and did not derive any benefit from the Government. Shri Sher Singh also denied the fact that he was a Member of Nilbar Society. He further stated that he had no contract with the Government for supply of wheat or rice.

On 10-11-1951 the Returning Officer passed an order wherein he reproduced the fact that Shri Sher Singh had denied that he was a member of the Pacca Ahrtis Association, Karnal, or that Shri Sher Singh was in any way interested in lands procured under the Utilization of Lands Act. After that there is a significant passage in the order of the Returning Officer to the following effect :—

"It has been admitted by Shri Sher Singh that he is a member of Sher Singh & Co., who, as such, is in turn a member of the New Rice Association, Karnal. The question, therefore, for final disposal is whether he is disqualified as a candidate under clause (d) of section 7 of the Representation of People Act, 1951."

The Returning Officer thereafter wrote that he had heard lengthy arguments and that as it was 6-20 P.M. then, and Shri Sher Singh wanted an adjournment for arguments till the following day, the proceedings be adjourned till then.

On the 11th November, 1951, an affidavit was filed by Shri Sher Singh to the effect that he had ceased to be a Member of the New Rice Association, Karnal on the 22nd October, 1951. The filing of this affidavit was objected to by the other party. The affidavit was, however, taken on the record and thereafter the Returning Officer passed an order whereby he rejected the nomination papers of Shri Sher Singh, respondent. A telegram was also received by the Returning Officer on the 11th November, 1951, purporting to be from Shri Sundar Singh, President, New Rice Association, Karnal. It was recited in that telegram that Sher Singh & Co., was no longer a member of the New Rice Association since 22nd October, 1951.

The Returning Officer held in his order that the telegram could not be admitted in evidence and that there was no presumption that the telegram was actually sent by Shri Sundar Singh, the President of the Association. The Returning Officer further held as under :

"Finally, the whole matter is extremely doubtful as up till yesterday the position of Shri Sher Singh was that he was, upto date, a member of the Association concerned. It is not possible to imagine any contingency whereby he should have made this statement at the bar without his being a member."

It is further stated in the order as under :

"Under the circumstances if Shri Sher Singh was not a member of the alleged association the following circumstances must have existed before hand :—

- I. He should have said yesterday that he had resigned from the Association ; In fact he was required to do so *vide* my order dated 9th November, 1951 and he clearly denied membership of several other concerns, questions about which were also raised.
2. He should have shown something in writing from the D. F. C. of his district."

The petitioner, in order to show that the respondent had in fact resigned from the Association on the 19th October, 1951, has produced P. W. 1 Shri Sundar Singh and P. W. 2 Shri Sher Singh. P. W. 1 Shri Sundar Singh has stated that on the 18th October, 1951, application Ex. P. W. 1 was received from Shri Sher Singh requesting that the name of his firm Sher Singh & Co., be removed from the list of members. Shri Sundar Singh has further stated that a meeting was held on the 19th October, 1951, and that a resolution was passed removing firm Sher Singh & Co., from the membership of the Association. The resolution in the minute book is marked Ex. P. W. 1 C. Shri Sher Singh has made a statement similar to that of Shri Sundar Singh. An intimation, it is stated, was sent by the President of the New Rice Association, in the form of a letter addressed to the District Food Controller Karnal, dated the 22nd October, 1951, Ex. R. W. 13/B. On this letter there is an endorsement Ex. R. W. 13/B-1 which runs as under :

"D.F.C. for N. A."

According to R. W. 13 Shri Raj Kumar, District Food Controller, this endorsement is signed by the District Organiser. The date beneath the endorsement is 15-11-1951. A similar endorsement also appears from the copy of the resolution that was sent to the District

Food Controller. The copy of the resolution is Ex. R.W. 13 C, while the endorsement on the same is Ex. R.W. 13 C-1.

Shri Raj Kumar has stated that he was on leave from the 30th October, 1951, till the 8th November, 1951. He attended office on the 9th November, 1951 and the letter Ex. R.W. 13 B was put up before him on the 10th November, 1951. Shri Raj Kumar thereupon passed an order thereon whereby he accepted the application and directed that an intimation of the same may be sent to the Association and to the firm Sher Singh & Co. This order is dated the 10th of November, 1951, and is marked Ex. R.W. 13 B-2. An intimation was accordingly sent to the Association as per letter dated the 11th November, 1951.

It has been argued by the learned counsel for the petitioner that the firm Sher Singh & Co. severed all connections with the Association when the letter Ex. P.W. 1 A was addressed on behalf of their firm on the 18th October, 1951, and the resolution Ex. P.W. 1 C was passed by the Association on the 19th October, 1951. I, however, find that even as late as 10th November, 1951, the position taken up by Shri Sher Singh respondent before the Returning Officer was that the firm Sher Singh and Co., was still a member of the Association. The point that was stressed by Shri Sher Singh then was only that this fact did not entail as a disqualification for Shri Sher Singh to stand as a candidate. This is clear from the order dated the 10th November, 1951, already reproduced heretofore.

Shri Sher Singh has stated that he purposely severed the connections of his firm with the Rice Association to avoid any possible objection to his candidature in the general elections. It is strange that Shri Sher Singh having deliberately and with a set purpose severed his connection with the Association failed to mention this fact in his affidavit dated the 10th November, 1951. If Shri Sher Singh had in fact severed his connections with the Association, normally one would have expected Shri Sher Singh to mention this fact very prominently in his affidavit. The omission of Shri Sher Singh to mention this fact, becomes all the more glaring especially when the Returning Officer had asked Shri Sher Singh as per order dated the 9th November, 1951, to file a complete and clear affidavit on the question whether the firm Sher Singh & Co., as such was a member of the New Rice Association, Karnal. The omission also becomes significant because while Shri Sher Singh denied his connections with Pacca Ahrtis Association and Nilbar Association he did not deny his connections with the New Rice Association. About New Rice Association Shri Sher Singh's position merely was that it was not a nominee of the Government. The Returning Officer also expressly recorded the fact that it was admitted by Shri Sher Singh on the 10th November, 1951, that the firm Sher Singh & Co., "is, in turn, a member of the New Rice Association."

The admission of Shri Sher Singh, in my opinion, leaves no manner of doubt and clearly shows that before the 10th November, 1951, Shri Sher Singh had not severed his connection with the New Rice Association. It is difficult to believe that Shri Sher Singh suffered from a lapse of memory and forgot all about his resignation from the Association.

So far as the letter Ex. P.W. 1 A of Shri Sher Singh to the Association is concerned, it is written on a loose paper and there can be no difficulty in writing it at any time. So far as the resolution Ex. P.W. 1 C of the Association is concerned, I find that proceedings of the Association are maintained in a register which does not inspire much confidence. The first two pages of the register are blank. In fact the register starts from the third page which is marked as page No. 1. Some proceedings are noted on pages 1 to 3. The pages 4 and 5 are absolutely blank. On page 6 there is a list of shareholders. Pages 7 and 8 are again blank. On page 9 there is a list of some shareholders. Page 10 is again blank. On page 11 there are minutes of the proceedings of a meeting. Page 12 is again blank. On pages 13 to 19 there are minutes of the proceedings of some meetings. The resolution Ex. P.W. 1 C is on page 18. After page 19 the register is blank. In my opinion it was not difficult to note down a resolution on such a register and to show the fact of its having been passed on a particular date.

It was next argued by the learned counsel for the petitioner that there were endorsements Ex. R.W. 13 B-1 and R.W. 13 C-1 on the letter and the resolution that were sent to the District Food Controller. It is in the evidence of Shri Raj Kumar that the signatures beneath the endorsements are those of District Organizer. The date beneath the endorsements is 5/XI. The District Organizer, who is alleged to have signed these endorsements, has not been produced before us and we do not know the full circumstances under which those endorsements were made by him. If it was a genuine endorsement and made on the 5th November, 1951, as the petitioner would have us to believe, in our opinion, it was imperative for the petitioner to produce the officer who made the endorsement, in the witness box, so that we could get from him all the facts. The failure of the petitioner to produce the Officer who made the endorsement, in our opinion, must raise an inference adverse to the petitioner.

No documentary evidence of such a character has been placed on the file as would show beyond any shadow of doubt that the letter Ex. R.W. 13 B and the copy of the resolution dated the 19th of October, 1951, were in fact sent to the office of the District Food Controller on the 5th November, 1951. In fact according to Shri Sunder Singh, an intimation with regard to Shri Sher Singh having severed his connections, was sent to the District Food Controller on the 19th October, 1951, or a day or two after that. No such intimation, however, sent either on the 19th

October, 1951, or a day or two after that, is forthcoming. The letter, addressed to the District Food Controller, is not entered in the receipt book kept by the District Food Controller. It is stated by Shri Raj Kumar that the papers received by his office from local persons were not generally entered in the receipt register. The fact, however, remains all the same that there is no entry of the letter Ex. R. W. 13 B and the accompanying copy of the resolution in any such register whose authenticity and genuineness may be beyond question.

Secrecy, they say, is the badge of fraud. There can be seldom be direct evidence of fraud, but it can only be inferred from circumstances. The authenticity of the letters and resolutions, about the severance of connections of the firm Sher Singh & Co., with the New Rice Association, can only be judged from the surrounding facts. If Shri Sher Singh had in fact severed his connections as early as the 19th October, 1951, with the Association, one would have expected that position to be taken up by Shri Sher Singh in the very first instance before the Returning Officer. The affidavit and position taken up by Shri Sher Singh before the Returning Officer, in our opinion, clearly show that Shri Sher Singh retained his connections with the Association till the 10th November, 1951, and that something happened between the 9th November, 1951 and the 11th November, 1951, which brought into existence the aforesaid letters and resolutions.

The next question that arises is as to what would be the effect on the nomination papers of Shri Sher Singh if he suffered from disqualification on the 5th November, 1951, i.e., the date of nomination, in case his disqualification was subsequently removed either on the date of scrutiny or a little after that. On that point we find that it has been laid down in a case decided by the Election Tribunal, North Arcot, Vellore entitled *Shri P. M. Balasubramanian Vs. Shri C. R. Narasimhan etc.*, that if a person suffered from disqualification on the date of nomination, the subsequent removal of the disqualification would not improve the matter. It was also laid down in that case that the material date in order to decide the eligibility of a candidate to stand for election is the date of nomination.

The learned counsel for the petitioner next argued that even if the petitioner be taken to be a member of the New Rice Association that fact did not disqualify the petitioner from standing as a candidate. Section 7 (d) lays down the law which has bearing on the present petition. It has been laid down therein as under :—

"A person shall be disqualified for being chosen as, and for being, a member of either house of Parliament or of the Legislative Assembly or Legislative Council of a State :—

(a).....

(b).....

(c).....

(d) If whether by himself or by any person or body of persons in trust for him or for his benefit or on his account, he has any share or interest in a contract for the supply of goods to, or for the execution of any works or the performance of any services undertaken by, the appropriate Government ;

(e).....

(f).....

Shri Sunder Singh stated that the New Rice Association was formed with the object of getting rice husked and to supply the same to the Punjab Government or to other bodies at the instance of the Punjab Government. In so far as they could not sell the rice in the market and that it was a Monopoly Scheme. Shri Raj Kumar, District Food Controller, stated that an agreement was executed between the Punjab Government and the New Rice Association on which is Ex. R.W. 13 P. This agreement was made between the Government of the Punjab on one side and the New Rice Association on the other. The material terms of this agreement are as under :—

"Whereas it is the policy of Government to control the disposal of all rice manufactured Karnal ;

And whereas the dealer has undertaken to place all supplies of rice manufactured by or for him for distribution under the orders of Government ;

And whereas the Government have agreed to authorise the dealer to have rice manufactured under the East Punjab Paddy and Rice (Mill Control and Procurement) Order, 1948", in the said place ;

Now these present witness as follows :—

(1) The dealers hereby agrees not to have manufactured, retained in his possession or disposed of any rice except and in accordance with the terms of this agreement.

(2) The dealer hereby agrees not to have any rice manufactured from paddy except by an Authorised Rice Miller.

(3) The dealer agrees to distribute all Rice manufactured by him or on his behalf under the Instructions and in the manner laid down by Government.

(3) (a) The dealers agree that each and every partner or member of the Association will work as rice dealer collectively on behalf of the Association and not in his individual capacity.

(4) The dealers agree to charge only such prices, incidental charges and commission, if any, for the rice sold by him, as are fixed by Government from time to time, and subject to the prescribed specifications and inspection for quality.

(5) (a) This agreement shall commence from 3rd October, 1951 and shall remain in force until its termination either by mutual agreement or by either party by one calendar month's notice in writing, or by any other provision of these presents.

(b) Within prejudice to sub-clause (a) Government shall have the right to terminate this agreement forthwith :—

(i) in the event of the dealer becoming insolvent, or his business being wound up, or making agreement with creditors or failing to observe or perform any provision of this agreement ;

(ii) if any bribe, commission, gift or advantage is given or offered by or on behalf of the dealer to any officer, servant, or any person acting on behalf of Government in relation to the operation of this agreement ;

(iii) for any other reason which it may deem just and sufficient.

(c) In the event of the agreement being determined, by Government under the provision of sub-clause (b) above, the dealer shall, in addition to any other liability, civil criminal, etc. under the terms of this agreement or otherwise be liable to pay any loss or damage resulting from such determination.

(6) The dealer agrees to deposit with the District Magistrate of the District a sum of Rupees 1,000 against the fulfilment of this agreement and agrees to the forfeiture by him of this deposit or any part of it for any breach by him or any person acting on his behalf of any of the provisions of this agreement."

Shri Raj Kumar, in the witness box, stated that the Association gets the rice husked and the entire rice obtained is sold by the Association to the Government again at a fixed rate subject to quality variations.

The learned counsel for the petitioner has contended that the aforesaid agreement was not a contract for the supply of goods to or for the execution of any work or the performance of any service undertaken by the Punjab Government. The learned counsel for the petitioner has also, in this connection, cited a case decided by the Election Tribunal relating to Kandaghat Constituency in PEPSU published in the *Gazette of India* dated the 6th December, 1951. In that case it was held that the mere fact that the father of a candidate, with whom the candidate was joint and was a member of the Grain Dealers Association, did not disqualify him from standing as a candidate. It was also laid down in that case that the arrangements with regard to the Rationing and Procurement of foodgrains were made by the State by virtue of Essential Supplies (Temporary Powers) Act, 1946, and there was no indication in that enactment that the Government had undertaken to supply foodgrains to the people of the State.

Before dealing with the question as to whether the agreement Ex. R. W. 13/I is hit by the provisions of Section 7(d) it would be more appropriate to deal with the history of this enactment and the case law that preceded it. Some of the English decisions which have a bearing on Section 7(d), have been reproduced in a case Dr. Kannabiran Vs. Shri A. J. Arunachalam decided by the Election Tribunal, Vellore and published in the *Gazette of India* dated 17th December, 1952. The relevant para, in which these cases have been referred to, runs as under :—

" Before we conclude, we have to refer to some of the English decisions cited before us by the learned Counsel, which have the bearing on the general policy implied in providing for the disqualification stated in clause 7(d) of the Act against persons being chosen for membership of democratic legislative bodies. As pointed out by the learned counsel for the petitioner, these decisions, based upon various enactments, in England, will not have much bearing when we have got the duty of interpreting and applying the provisions of an enactment, like the Representation of the People Act, which differs from previous Statutes in several material respects. But the decisions, however, have a value for the light they throw upon the jealousy with which democracy guards the freedom and independence of its elected representatives. The principle, which these decisions emphasise, is that no member of a legislature or a Municipal Body, should be elected, if there will be a likelihood of a conflict between his duty and interest. Another principle laid down is that a disqualifying clause in an enactment, should be construed strictly, because it is penal in nature. In 1925-1 Kings Bench Division—Lapish in Vs. Braithwaite, page 474, at page 485, the Court had to construe a disqualification clause under the Municipal Corporations Act, 1882, against a candidate having a share or interest in a contract or employment with, by, or on behalf of the council, and it observed that " the attention of the legislature in framing that section was to secure, as was thought necessary, that aldermen and councillors should not place themselves in positions in which their duty and

their interest conflicted and to remove a possible source of temptation.' In Holden *Vs.* Southwark Corporation 1921-I-Chancery Division, page 550, their Lordships applied the Local Government Act of 1894 which provided disqualification for membership for a person 'concerned in any bargain or contract entered into with the council, or who participates in the profit of any such bargain or contract and held that such and similar provisions were intended to prevent the members of Local Boards, who may have occasion to enter into contract from being exposed to temptation or even to the semblance of temptation, and the object obviously was to prevent the conflict between the interest and duty that might otherwise inevitably arise.' These observations were quoted from an earlier decisions in 22, Queen's Bench Division 747, Nutton *Vs.* Wilson. The decision in 129, English Reports, page 532, Thompson *Vs.* Pearce, relied upon by the Counsel for the first respondent, is relevant only for the observation that in constructing an act, the first thing to consider is the nature of the act, whether it be remedial or penal and that the act which disqualified a candidate for the parliament 'if he had interest in a contract with the Commissioners of His Majesty's Treasury, Navy or the Victualling Office, or with the Master General or Board of Ordnances, or with anyone of more such Commissioners, or with any other person or persons whatsoever, on account of public service was surely penal and, therefore, the Court had to construe it strictly'. But the facts of the case were wholly different, and that case had no application here. Even if we have to give due weight to the policy underlying the disqualification, as stated in the decisions cited, that the individual elected should not be exposed to a situation where his duty and interest might conflict, we are of the opinion that it will hold good in the case of the first respondent also. It will be unnecessary to catalogue a number of possible situations which might arise, and it will suffice to mention one such situation, for example, when the member elected, may have to vote for the continuance or discontinuance of the State nominee system, it will be an occasion when his duty and interest conflict with each other."

¹ It has also been laid down in the two authorities, one decided by the Election Tribunal in Saurashtra State in Election petition No. 1 of 1951 and the other in case Dr. Kannabiran *Vs.* Sari A. J. Arunachalam that the words "contract for" used in section 7 (d) must be held to govern also the clause "the performance of any services".

1 A perusal of the agreement Ex. R. W. 13/F shows that the Association has agreed to distribute all rice under the instructions and in the manner laid down by the Government. The Association was entitled to charge such price and other incidental charges as they were authorized to charge by the Government. The Government had to bring on the Statute Book the Essential Supplies (Temporary Powers) Act because there was a shortage of certain supplies and the Government wanted to regulate their supplies so that the general public may not experience difficulty in having their due share of those supplies.

¹ With the advance of times, the functions and activities of the Governments have considerably expanded. The exigencies of the modern times demand the undertaking by the Government of a number of services which were considered beyond the pale of the normal activities of State in ancient times. Even the trend in some of the countries is for the establishment of a welfare state wherein the Government undertakes to supply a very large number of amenities to its citizens. Even in those countries, where we do not have an attempt for welfare State, the Government undertakes certain essential services for the betterment of the people. With that end in view the Government takes upon itself the duty, *inter alia*, of fair distribution of certain essential supplies like foodgrains. It has been laid down on page 186 of "Modern State" by R. M. MacIVER 1950 Edition as under:

"Just as the conception of order widens into that of protection, so does protection in turn find a wider interpretation in the business of conservation and development. The state with its command of resources and its universal reach can build for the future in ways that no partial organization may attempt. It can over-rule the near selfish aims that would waste for immediate advantage the greater gifts of nature. It can carry on vast works of constructive enterprise whose benefits will be shared by future generations. It can control by means of the forethought which is proper to its might and permanence the haphazard endeavours of individuals which result, when left alone, in sprawling, ill-built, congested cities and a slovenly, ill-tended countryside. It can preserve and enhance those signal beauties of forest and lake and mountain which the advance of industrialism threatens. It can carry on fruitful experiments in irrigation, the utilization of the soil, the breeding of plants and animals, the control of insect pests, and other services of great significance for the development of agriculture. It can promote the establishment of industries, by providing initial aid and by facilitating the discovery and application of scientific methods. It can mitigate the severity of economic fluctuations by its control over currency, credit, and its own expenditures. In a great variety of ways it can encourage the industry, trade and commerce of the country, a perfectly legitimate enterprise of Government so long as it does not yield to the constant temptation to benefit the part at the expense of the whole."

Further it has been laid down on page 311 of the said book as under :

- " The fluctuating eccentricity of economic and political powers could not be better illustrated than by the resulting situation. The growth of the economic corporation has killed the principle of *laissez-faire*. Its might for good and evil is too great to be "let alone". It cannot refrain from influencing the policies of the state, nor can the state, without denying its *raison d'être*, the common interest of its members, refrain from the task of regulation. The consumer appeals to the state for protection against monopoly, the worker demands safeguards for labour, the small business man cries out against 'unfair competition', while 'big business' seeks tariffs against the foreigner.
- The state, feeling the constant impact of opposing economic forces, cannot stand still. It must act as the trend of public opinion directs. In general it must, in the measure of its democratization, act as a moderating influence to temper the inequalities which form the essential condition of economic power".

It is also noteworthy that even the position taken up by the petitioner himself in the petition is to the effect that the fact that a person has a contract for supply of foodgrains to the government entails as a disqualification. The petitioner has alleged in the petition that Shri Mukand Lal respondent was not entitled to stand and his papers were improperly accepted. The allegation against Shri Mukand Lal as brought in evidence, was that he was a member of New Fazilka Pacca Ahrts Association. It however, transpired ultimately that Shri Mukand Lal had severed his connection with that association earlier. The fact remains all the same that according to the petitioner's case as set up in the petition the membership of New Fazilka Pacca Ahrts Association amounted to a disqualification. There does not seem to be much difference in the functions of the New Fazilka Pacca Ahrts Association and the New Rice Association, Karnal except that one dealt in wheat and barley while the other dealt in rice.

In my opinion, the Punjab Government has taken upon itself an essential service for the equitable distribution and availability at fair price of foodgrains and other essential commodities and for that reason they issued the East Punjab Paddy and Rice (Mill Control and Procurement) Order 1948. I also find that the New Rice Association Karnal, by entering into that contract with the Punjab Government, entered into a contract for the performance of a service undertaken by the Punjab Government. In the case Dr. Kannabiran *Vs* Shri A. J. Arunachalam, mentioned above, the first respondent was a State nominee of the State Government for the distribution of bales of yarn in the North Arcot District. The question arose whether he was disqualified under section 7(d) of the Representation of the People Act. It was held by the Tribunal that the State Government had taken upon itself an essential service for the equitable distribution and the availability at fair price of yarn. The election of respondent No. 1 was set aside.

In another election petition No. 1 of 1951 in Saurashtra the petitioner was a registered stock holder in Saurashtra in Iron and Steel. The petitioner's nomination papers for being elected to the State Assembly were rejected and he filed an election petition. In that case the only argument which was advanced and accepted by the Tribunal was that the Iron and Steel were controlled by the Central Government and their distribution was controlled by the Central Government, and that the Saurashtra Government could not be deemed to be an appropriate Government. It was however, otherwise never doubted in that case that the contract for the distribution of iron and steel fell within the mischief of section 7(d).

In the case Shri Gian Chand *Vs* Shri Ram Bansal, referred to above cited by the petitioner, there was no indication in the agreement that the Association had agreed to supply foodgrains to any particular person. In the present case an indication to that effect is there in the statement of Shri Raj Kumar wherein he stated that the Associations sold the entire rice after husking the same to the Government. Apart from that, in my view, the reasoning and the conclusions arrived at in the case Dr. Kannabiran *Vs* Shri A. J. Arunachalam lay down the Law correctly. The Punjab Government by issuing various directions, notifications and entering into contracts did undertake the service of regulating the supply of rice and paddy in the State. Shri Sher Singh, having entered into a contract through the New Rice Association with the Punjab Government, was disqualified by section 7 (d) of the Representation of the People Act.

I, therefore, hold that Shri Sher Singh was not qualified to stand and his nomination paper must, therefore, be held to have been rightly rejected.

The petition consequently fails and is dismissed.

As the petitioner has withdrawn all his allegations with respect to corrupt practices, detailed in his petition and the case is being decided on preliminary issues only, we allow nominal costs i.e. Rs. 100/- only to Shri Wadhawa Ram, respondent No. 1.

The 2nd April, 1953.

(Sd.) HANS RAJ KHANNA, Member.

We agree.

The 2nd April, 1953.

(Sd.) HARBANS SINGH, Chairman.

(Sd.) PARMANAND SACHDEVA, Member

None present.

Announced in open court,

(Sd.) HARBANS SINGH, Chairman.

(Sd.) HANS RAJ KHANNA, Member.

(Sd.) PARMANAND SACHDEVA, Member

The 2nd April, 1953

ANNEXURE 'A'

This case is fixed for today for hearing arguments on all the three preliminary issues. On further consideration of the whole matter and after a careful perusal of the petition, the written statements and replication, filed by the parties in this case, we find that corrupt and illegal practices have been alleged by the petitioner and controverted by the respondents. These have to be adjudicated upon by the Tribunal irrespective of the fact whether the decision on preliminary issues Nos. 1 and 2 goes to the root of the case or not. Under Section 99 of the Representation of the People Act, 1951, we are legally bound to give our finding on the merits of the case with regard to the alleged corrupt and illegal practices, even if our decision on the preliminary issues is to the effect that the whole election is void on account of the improper rejection or acceptance of the nomination papers. We, therefore, feel inclined to defer hearing arguments and pronouncing our orders on preliminary issues Nos. 1 and 2 at present. These will be taken up along with the issues on merits when framed.

At present we will proceed to hear arguments on issue No. 3 only.

(Sd.) HARBANS SINGH, Chairman.

(Sd.) HANS RAJ KHANNA, Member.

(Sd.) P. N. SACHDEVRA, Member.

The 14th February, 1953.

ANNEXURE 'B'

Arguments heard on issue No. 3 only. Objections were taken on behalf of the respondent with regard to lists A to D in the list of particulars.

List 'A'—The allegations in this list are that election agents, other agents and supporters of respondent No. 1, made systematic appeals to the voters of the Kamboh caste to vote for respondent No. 1 on the basis of caste, community and religion. In the latter part, the names of three persons who were said to be the polling agents of respondent No. 1, are mentioned and it is stated that these persons made these systematic appeals in public meetings in villages Shajrana and Begawali. No details are mentioned with regard to other agents or supporters and it is not stated as to how and where those other persons exercised their influence or made the systematic appeals. We, therefore, agree with the contention of the learned counsel for the respondent that the petitioner will be confined to the specific allegation made in the last part of this list that is that he would be confined to three names given by him and the two places mentioned by him. He has, however, not mentioned the dates of these meetings. We, therefore, call upon him to furnish information with regard to the dates on which the public meetings, referred to in this list, were held at the two villages.

List 'B'—The only name, mentioned in this list, is that of Shri Charanji Lal Dhir, one of the polling agents, who is said to have given false promises of free grant of land. The opening paragraph of this list is in general terms saying that the aforesaid false promises were given by 'agents of respondent No. 1'. The evidence, however, will be confined to the persons named i.e. Shri Charanji Lal Dhir. The petitioner will also give the dates on which the aforesaid false promises were made.

List 'C'—This seems to be the complete list in all respect and we over-rule the objection of respondent No. 1.

List 'D'—This list, read with the corresponding paragraph 8 of the petition, is with regard to the undue influence said to have been exercised over some cultivator voters of village Karni Khera by the persons named in the list.

In paragraph 8, the allegation made is that the voters were "threatened to suffer expulsion" in case of their failure to vote in favour of respondent No. 1. This allegation is very vague. This petitioner must give particulars of the way in which undue influence was exercised.

The counsel for the petitioner states that he is not in a position to give the particulars today and wants a short adjournment.

After this order has been dictated in court and the date for the next hearing was to be fixed, the petitioner's counsel wants to make a statement. Let his statement and that of the Mukhtu khas of the petitioner be recorded.

(Sd.) HARBANS SINGH, Chairman.

(Sd.) H. R. KHANNA, Member.

(Sd.) P. N. SACHDEVRA, Member.

[No. 19/137/52-Elec.III/4508.1.]

The 14th February 1953.

S.R.O. 697.—WHEREAS the election of Shri Deenabondhu Behara, residing at Ratnapur Village, Post Office Netanga, District Ganjam, as a member of the Orissa Legislative Assembly from the Russellkonda constituency, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri A. Gangadharo Patro of Bellagunta, District Ganjam;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act, for the trial of the said election petition has in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order on the said election petition;

Now, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the Order of the Tribunal.

IN THE COURT OF THE ELECTION TRIBUNAL, GANJAM-NAYAGARH
BERHAMPUR, GANJAM DIST., ORISSA

PRESENT : Sri Dwarikanath Das, B.A., B.L.—Chairman.
Sri G. Krishnamurti, M.A., B.L.—Member.
Sri Ramekrishna Ratho, M. A. , B.L.—Member.

ELECTION CASE No. 3 OF 1952

The 31st day of March, 1953

BETWEEN

Dr. A. Gangadhar Patro, son of A. Madhub Patro, Vysya by caste, aged about 34 years, Registered Medical Practitioner, residing at Bellagunta, within the limits of Russelkonda Police Station, Ganjam District, Orissa.—Petitioner.

AND

1. Sri Dcenabandhu Behara, son of Raghunath Behara, Sundi by caste, aged about 45 years, pleader, residing at Rainapur village, Post Nelanga, within the limits of Russelkonda Police Station, Ganjam District, Orissa.
2. Sri Gourobari Behara, son of Kapikethano Behara, Alia by caste, aged about 40 years, landlord, residing at Inginiathi village within the limits of Russelkonda Police Station, Ganjam District, Orissa.
3. Sri Sadhucharan Das, son of Bhagirathi Das, Karanam by caste, aged about 49 years, Press Proprietor, residing at Berhampur within the limits of Berhampur Police Station, Ganjam District, Orissa.
4. Sri Hiralakshman Das, son of Raghunath Das, Karanam by caste, aged about 45 years, landlord, residing at Russelkonda within the limits of Russelkonda Police Station, Ganjam District, Orissa.
5. Sri Dandapani Palo, son of Dinabandhu Palo, Brahmin by caste, aged about 45 years, landlord, residing at Russelkonda, within the limits of Russelkonda Police Station, Ganjam District, Orissa.
6. Sri Trinath Mahapatro, son of Gopabandhu Mahapatro, Mali by caste, aged about 34 years, residing at Ballipadar, within the limits of Gangpur Police Station, Ganjam District, Orissa.
7. Sri Madhabochandra Rauto, son of Krupasindhu Rauto, Kurumo by caste, aged about 52, landlord, residing at Nulasingi village, within the limits of Russelkonda P.S.
8. Sri B. Venkataraman, I.A.S., son of not known, Brahmin by caste, aged about 30 years, Returning Officer, who is now Sub Divisional Officer, Ghumsur, residing at Russelkonda within the limits of Russelkonda P. S., Ganjam District, Orissa.—Respondents.

Mr. B. Jagannath Rao, advocate for the Petitioner.

Mr. Y. Sriramamurti, Mr. H. G. Panda and Mr. M. Sitaramayya, advocates for respondent No. 1.

Mr. C. V. Suryanarayana, pleader for respondent No. 3.

Mr. S. Mahapatra, pleader for respondent No. 2.

None for respondents 4, 5 and 7.

Mr. Ramanath Das, pleader for respondent No. 6.

Mr. R. N. Gantayat, advocate and Government Pleader for respondent No. 8.

ORDER

This petition has been filed by one Alupathi Gangadhar Patra, a defeated candidate, at the election held in the Russelkonda Constituency for the return of a member to the Orissa Legislative Assembly in January, 1952 against Sri Dinabandhu Behera, respondent No. 1, the successful candidate, who is the President of the District Board, Ganjam, and respondents 2 to 6 who are the other defeated candidates at the said election and respondent No. 7 who withdrew his candidature duly and respondent No. 8 Sri B. Venkataramana, I.A.S., the Returning Officer for the said constituency, praying that the election of respondent No. 1 be set aside and declaration be made that the petitioner himself is duly elected to the Assembly.

2. The petitioner in his petition has made several allegations in support of his case and placed them under several heads. But at the time of the evidence, he has confined himself to only some of the said allegations while at the time of argument he has further narrowed down his contentions. Therefore, leaving off the unnecessary averments made in the petition, we have to confine our consideration only to such allegations as are important.

3. The case of the petitioner in brief is that he obtained 3927 votes whereas the 1st respondent obtained 4227 votes and that he would have secured a larger number of votes than the respondent

No. 1 but for the corrupt and illegal practices and undue influence exercised by the respondent No. 1 during the election. Secondly, respondent No. 8 Sri B. Venkataraman has wilfully under-counted the votes obtained by him with a view to help the 1st respondent. The corrupt and illegal practices committed by respondent No. 1 have been set forth in para 8 of the petition and the particulars therof have been set forth in schedules A to D, H and I, attached thereto. The under-counting and mischief committed by respondent No. 8 has been set forth in para 3 of the petition and schedules E, F and G attached to it. Regarding the corrupt practice of bribery, the full particulars are set forth in schedule A. Schedule A consists of 13 items of which item No. 11, relating to the cinema business of respondent No. 2 is said to be the most serious. It is alleged that one Sri Biswanath Das, a candidate for the Parliamentary Constituency and respondent No. 1 induced respondent No. 2 to withdraw from contest on the bait of a promise to help him in obtaining a license for running his cinema for which he was trying hard for some time. The next in order of importance is item No. 10 relating to the appointment of a teacher in the District Board. Under this head, the petitioner urges that respondent No. 1 had removed one Sahadeb Swain, a relation of one Arjun Mallo of Dengapadar from a teacher's post in the District Board and reinstated him on the eve of the polling as a hush to induce Arjun to help respondent No. 1 to obtain the votes of the villagers of Dengapadar. The third item of consequence is item No. 8 relating to the laying of a road to Chadhiapalli village by respondent No. 1 as President of the District Board with a view to get the votes of the villagers, details of which are set forth in the appropriate place below. The other items of schedule A are said to be not of much consequence. It may also be stated here that the corrupt and illegal practices referred to in schedules B to D, H and I are not pressed as of any material consequence. We have, therefore, to concentrate our attention on schedule A items 8, 10 and 11 and the mischief, if any, alleged to have been committed by respondent No. 8 set forth in schedule G in particular.

4. Respondent No. 1 files a counter refuting all the charges made against him and with regard to items 8 and 10 of schedule A, he replies that he did not do any acts which are beyond his legitimate duties as the President of the District Board. He admits that a road was laid to Chadhiapalli village but avers that the matter was in contemplation some time before the election season and the estimate for laying the road had already been made before and that the villagers contributed a substantial sum for the said road and before the end of the financial year in March 1952, he advanced Rs. 175/- only out of his discretionary grant towards the said road to avoid lapse of any amount under that head. With regard to item No. 10 his reply is that appointment of a teacher, one Sahadeb Swain was no doubt made by him in December 1952 but it was done in the usual course of business and in discharge of his duties as the President, District Board. He, therefore, urges that neither of the above two items has anything to do with his election. Regarding item No. 11 of schedule A, respondent No. 1 denies *in toto* any complicity or knowledge of obtaining a license by respondent No. 2 for running his cinema. He denies broadly the other allegations made in the petition against him. Regarding the irregularities and mischief said to have been committed by respondent No. 8, he urges that there was no such irregularity committed in the conduct of the election or undercounting by the Returning Officer (Respondent No. 8) as alleged by the petitioner.

5. Respondent No. 2 Sri Gourahari Behera is the Managing Director of the firm carrying on the cinema. He refutes the charge levelled against him in the petition that he was won over by respondent No. 1 by a promise to help him in obtaining a license for his cinema and urges that he obtained his license from the District Magistrate in due course of things and that respondent No. 1 had nothing to do with it. He, however, supports respondent No. 1 in the case and asserts that the election was conducted strictly in accordance with the provisions of the Act and the Rules made thereunder and it was a clean and fair election. He avers that he filed his nomination but after having gone over the constituency and consulted the electors and his friends and supporters, he felt convinced that it was a time when the hands of the Congress are to be strengthened in the best interest of the country and so he withdrew from contest. It should be remembered that respondent No. 1 was a candidate chosen by the Congress and Sri Biswanath Das was so chosen by the Congress for seat in the House of People.

6. Respondent No. 3 in a short counter supports the case of the petitioner. Respondent Nos. 4 and 5 filed no counters. Respondent No. 6 filed a counter refuting the allegation of collusion with respondent No. 1 made against him in the petition. Respondent No. 7 files a formal counter as he withdrew his candidature. Respondent No. 8, the Returning Officer, files a counter refuting all the allegations made against him and asserted that he had absolutely no *mala fide* intention on his part and that as a Returning Officer and a Government servant he did the counting with the utmost care and accuracy and that there was no violation of any of the provisions of the rules and of the Act in the conduct of the election or the counting of the votes.

7. On the above said contentions, the following issues have been framed:—

1. Whether respondent No. 1 and his agents have resorted to bribery and undue influence specified in schedules A and B of the petition?
2. Whether respondent No. 1 and his agents have made false propaganda or committed other acts constituting illegal practice set forth in schedules C and D of the petition?
3. Whether the irregularities in the conduct of the election set forth in schedules E and F of the petition have been committed?

4. Whether respondent No. 8 Cum-Returning Officer, reduced the number of votes obtained by the petitioner during the counting?

5. Whether any of the factors referred to in issues 1 to 4 have materially affected the result of the Election Petition?

6. Whether respondent No. 1 is disqualified from standing for election for the reason that he held a share and interest in a subsisting contract with the State Government?

7. Whether the election of Respondent No. 1 is void?

8. Whether the petitioner is entitled to a declaration that he has been duly elected?

9. Whether the petition is in time?

10. Whether the petition is bad for misjoinder of causes of action and parties?

11. Whether the petition is maintainable against respondent No. 8 for his wilful misconduct and the criminal acts attributed to him?

12. What other relief, if any, may be given in the case?

8. There are as many as 12 issues but the most important ones are issues Nos. 1, 2, 3 and 4 which require our serious consideration.

9. *Issue No. 1.*—In this issue the corrupt practices of bribery and undue influence specified in schedules A and B of the petition are to be considered. Schedule B of the petition has not been pressed as of consequence. We are, therefore, left with only schedule A and particularly as stated above, with item Nos. 8, 10 and 11 and item No. 9 of the said schedule.

10. *Item No. 8.*—This item is that on 20th December 1951, respondent No. 1 went to Chadhiapalli village and offered to one Jogi Lenka and some others of the village to get a road constructed for the village by the District Board of Ganjam of which he is the President with a view to secure the votes of the villagers for him. The documents relating to this item are Ex. K series and L and the oral evidence on this point is given by P.W. 22. Witness No. 2 for respondent No. 1 is Balayya Patra and witness No. 7 for respondent No. 1 is Sri Dinabandhu Behera, respondent No. 1 himself. Ex. K is a petition dated 31-10-51 sent by the villagers of Chadhiapalli to the President, District Board, Ganjam (Respondent No. 1) stating their inconveniences and asking for laying of a road to their village. Ex. K-1 is the endorsement on the said date by respondent No. 1 as President on the back of Ex. K asking the Assistant Engineer, Aska, to include this item of work in the third class road work. The endorsement further says: "The S.O.I. hear, has made some estimate. This is sent to S.O. Russelkonda to send the estimate immediately. The Assistant Engineer, Aska, is requested to send the estimate along with the other road programmes to the District Board Engineer, immediately. This is urgent". Ex. L is the work estimate of the village road to Chadhiapalli dated 6-11-1951 made by the Assistant Engineer for Rs. 1,180. Ex. K-2 is the memo issued by the District Board Engineer, Ganjam, dated 7-12-1951 sent to the Assistant Engineer, Aska, stating that "the Board is prepared to sanction Rs. 700 only towards the cost of the road and that the balance of Rs. 480 has to be borne by the villagers to complete the work and that if the villagers are willing to contribute the said Rs. 480, a written undertaking from them should be obtained and submitted to him for necessary action". Ex. K-3 and K-4 dated 20-12-1951 are the undertakings given by the villagers to the President, District Board agreeing to the above condition. Ex. K-5 is the office copy of the order which shows that an amount of Rs. 175 was paid by the President, District Board out of his discretionary grant to one Binayak Sahu of Chadhiapalli for earth work done in the village. The evidence of respondent No. 1 (witness No. 7 for respondent No. 1) is that the said amount was paid by him at the end of March 1952 as the financial year was closing and as the villagers had already commenced the earth work and done some amount of work for laying the road. There is however no report on record showing that some work had been already done by the villagers. The petitioner has examined P.W. 22 to say that about 15 days before the polling on 9-1-1952 respondent No. 1 met 15 or 20 persons near the culvert about a hundred yards from the garden of witness No. 2 of respondent No. 1 in Chadhiapalli village, and that he was present on the spot. He gives the names of some of the villagers and says that Balayya Patra (R.I.W. 2) was also present there. This witness says that respondent No. 1 asked for the help of the villagers in his election and as they were not willing to vote for him, he prevailed upon them by offering to lay a road to their village. This witness is of very meagre status and is the sister's son of Balayya Patra but is not in talking terms with him. He has sold all his properties in his original village Belaguntha near Chadhiapalli and has been living in his wife's house at Berhampur and makes his living by selling miscellaneous articles. He states that he had been to the garden of Balayya Patra. His evidence is not convincing and we are not prepared to accept it. Balayya Patra denies having been present at any such incident and says that this witness was the worker of the petitioner and once unloaded seven bicycles from a lorry sent by a merchant of Berhampur to the petitioner for use in his election which fact is however denied by P.W. 22, although the petitioner himself admits that he had been supplied with bicycles from Berhampur. Respondent No. 1, as already stated, refutes the suggestion that he offered to lay a road in lieu of a promise by the villagers to vote for him but states that he did it in the usual course of business and admits having paid Rs. 175 in March 1952 out of his discretionary grant. Balayya Patra witness No. 2 for respondent No. 1 totally denies his presence at

such an incident. Even though there is no report to show that the villagers had done some work we are not prepared to disbelieve the statement of respondent No. 1 on the point. We have however to bear in mind that it is natural that all requests from constituencies usually receive prompt attention from an office holder at the time of election if he happens to be a candidate for the election and respondent No. 1 cannot be found fault with for such action. The real point is whether respondent No. 1 abused his official position to further the prospects of his election. Respondent No. 1 has taken the necessary care to pass the matter through the proper channel and got it regularised to such an extent that we are not able to find that he has gone far out of his way in this matter. At the same time, we have to leave some margin for the deterioration of the discipline and morale of the present day administration of the District Board as can be seen from the evidence in the case. As the villagers had already started the work in October 1951, and the estimate had already been made, we are unable to accept the contention of the petitioner that respondent No. 1 laid the road as an inducement to secure votes for him and we are unable to find that respondent No. 1 has transgressed his limits and resorted to the corrupt practice of bribery in this matter.

11. Item No. 9 of Schedule A.—In this item, it is alleged that respondent No. 1 and Sri Dina-bandhu Panda witness No. 3 for the respondent No. 1 (the surpunch of Balipadar) went to respondent No. 6 Tripathi Mihapatra and offered him Rs. 700 on condition that he should withdraw from the contest and support the 1st respondent. Respondent No. 6 in his counter denies the offer and the withdrawal. Respondent No. 1 and Dina-bandhu Panda (sur-punchr) totally deny having made any such offer to respondent No. 6. Moreover, there is the fact that respondent No. 6 actually polled 1,760 votes at the election which shows that he did not withdraw or collude with respondent No. 1. There is no reliable evidence on the side of the petitioner to prove the said offer to respondent No. 6. We have therefore no hesitation in finding that this charge has not been proved.

12. Item No. 10 of Schedule A.—This relates to the appointment of one Sahadeb Swain as a teacher of the District Board. It is stated by the petitioner that respondent No. 1 went to Dengapadar village in the first week of December 1951 during his election tour and approached one Arjun Malla, an influential person of the village, for help in the matter of obtaining the votes of the villagers and undertook to reappoint his grand-son-in-law Sahadeb Swain as a teacher under the District Board and that this appointment was actually made in December 1951 and that the 1st respondent consequently got most of the votes in the said village. Respondent No. 1 in his counter states that Dengapadar is very near his home and he has got considerable influence in that locality and that the insinuation is totally false. He, however, admits that he reappointed Sahadeb Swain as a teacher in the Board Service on 6-1-1952 but pleads that he did it in the usual course of discharge of his duties and did not go out of his way to render any special help to Sahadeb Swain.

13. Sahadeb Swain was appointed as a teacher in the District Board School in the year 1948 and by April, 1950, he was holding the post of an acting elementary school teacher in Talasaka village. Charges were framed against him at that time to the effect that he absented himself frequently without leave. Further charges were also framed against him in October 1950 for tampering of records. The matter was enquired into by one Dina-bandhu Panda, a Member of the District Board, witness No. 3 for respondent No. 1 and on the basis of the said report and the charges framed against him respondent No. 1 passed the order Ex. 4, dated 3-4-1951 to the effect that he absented himself without leave, that though he was without employment since April 1950, he never applied for posting orders by registered post except one on 4-2-1951 after the charges were framed, that the teacher was given an opportunity to explain his conduct on the charges framed against him and did not deserve to be a teacher under the Board and that therefore his name be removed from the register and he be considered as no longer in service. Sahadeb Swain filed an application Ex. 5 on 30-9-1951 before the President, District Board, Ganjam stating that he was new to his office as teacher, did not know the rules and was obliged to absent himself frequently due to illness in his family. He owned his mistake and begged to be excused and further pleaded that he was poor and was not able to maintain his family and gave an undertaking to do good work in future if reinstated. There is no evidence on record as to whether, this application was sent to respondent No. 1 by post or handed over to him or to anybody else on that day but there is a note of recommendation made by one Sri R. C. Misra, Member District Board, on the same date to the effect that his case deserves favourable consideration — he is very poor and that he knew him well and that his character is good and that he may be excused and given a chance. On the said application respondent No. 1 passed the following order on 1-10-1951. "This is his first offence. Again, he was discharged from service for the last several months. Hence, he is excused to give him a trial. He may be treated as a registered candidate." Thereafter, there is an office note Ex. 5-a dated 29-12-1951 which says "Sri Sahadeb Swain of Jahada whom President, District Board excused or Sri Dhaneswar Misra of Sunya Ramchandrapur, P.O. Kudala whose appointment was cancelled may be appointed at Badakholi". On that office note, respondent No. 1 has passed the following order on 31-12-1951. "Upendra Patnaik, Assistant, Badakholi is transferred to Kamagada and Sahadeb Swain of Jahada is appointed at Badakholi". Ex. 6 the appointment order was then drawn on the basis of this order. Ex. 6 which is the office copy of a memo dated 6-1-1952 signed by the Secretary of the District Board of Ganjam runs thus:—"Sri Upendra Patnaik, Assistant, Board Elementary School, Badakholi, is transferred on request as assistant

teacher Board Elementary School, Kamagada, vice post vacant. (2) Sri Sahadeb Swain of Juhudi is appointed as assistant teacher, elementary school, Badakhali, vice No. 1 transferred until further orders. No. 2 should join the post within 10 days from the date of this order failing which, this will be cancelled automatically. He should produce qualification certificate for fixation of his pay". Copies of this memo were communicated to the concerned persons.

14. We have to remember certain facts in this context, *viz.*, that the respondent No. 1 had been nominated to be chosen as a Congress nominee for the Russelkonda constituency by the District Congress Committee on 16-9-1951 and a few days thereafter on 30-9-1951, Sahadeb Swain filed Ex. 5 and respondent No. 1 immediately passed the order on 1-10-1951 on the application itself. The hurried manner and the out-of-the-way procedure adopted by respondent No. 1 are circumstances which show that he was anxious to render some help to Sahadeb. The proximity of the date of application Ex. 5 30-9-1951, the prompt direction of respondent No. 1 thereon on 1-10-1951 to register Sahadeb Swain as a candidate and the putting up of the office note on 2-10-1951, the passing of the order thereon by respondent No. 1 on 31-12-1951 and the issue of the same order by memo Ex. 6 on 6-1-1952 to the date of polling on 9-1-1952 and the coincidence of the time of appointment with the time of polling lead us to think that the said coincidence of dates was not accidental. Moreover, Sahadeb had been discharged from service in April 1951 with a bad remark by the President himself, who strongly condemned him as not deserving to serve in the District Board and there were serious charges against him *viz.*, tampering of records and frequent absence without leave. He evidently had lost all hopes and was lying low but with the offing of the election season, he raised his head and entertained hopes of reinstatement and put in his application Ex. 5. In the ordinary course of things, it is not expected that Sahadeb would have put in such an application unless something had transpired in the meantime which gave him hope of reinstatement. The tone of the application Ex. 5 does not exhibit a forlorn hope on his part but positive hope evidently based on something that had transpired previously and it is possible that taking advantage of the fact that respondent No. 1 was going to stand for the constituency Sahadeb Swain sought the assistance of R. C. Misra aiming at an appeal to the respondent No. 1 with the hope that will bear fruit while respondent No. 1 on his part was ready to help him in view of his impending candidature for the election and there was a reciprocal implied understanding between each other.

15. The petitioner has examined P.W. 18 Purushottam Patnaik and P.W. 19 Bhagaban Gouda. P.W. 18 says that he heard respondent No. 1 talking to Arjun Malla in a meeting in Dengapadar in the first week of December 1951 saying that Arjun should help him with his own vote and the votes of his village. That Arjun retorted saying that Sahadeb, husband of his granddaughter had been removed from the District Board service and how could he expect help from him and that therefore respondent No. 1 gave him the hope that Sahadeb should be given a teacher's post pending the election and respondent No. 1's candidature may be considered. At that time, this witness was an acting Karanam. He says that at the meeting there were about 20 persons, that Sahadeb was not there and that he went to the meeting casually, that all the members of the meeting heard about the proposal made to Arjun Malla but that he did not disclose to anybody what he heard at the meeting. His evidence appears unnatural and we do not accept it. P.W. 19 simply says that in December 1951, he went to Dengapadar and there he came to know of what had transpired between respondent No. 1 and Arjun Malla and that he cannot say who told him about it. The evidence of this witness is of no use. We, therefore, do not believe that respondent No. 1 actually made such an express proposal or a promise at Dengapadar as is sought to be made out by the petitioner by the evidence of the above two witnesses. There is also no clear evidence regarding what influence Arjun Malla has in the village. Still the attendant circumstances of the matter and the intrinsic features of the documents bearing on the point cause a suspicion in our mind that respondent No. 1 made this appointment with the hope of securing the help of the villagers of Dengapadar of whom Arjun Malla is said to be an important person. Respondent No. 1's answer to this accusation is that Arjun Malla is not an influential person and that there was a vacancy to be immediately filled up and Sahadeb Swain put in his claim and he appointed him in due course of things. This was in due discharge of his duties as President, District Board and has no relation to his election in any way. He denies having gone to Dengapadar in the first week of December 1951 or at any other time to Arjun Malla to get his grand-son-in-law appointed as a teacher. He further says that he passed the order on the application of Sahadeb Swain Ex. 5 after the office had put up the note Ex. 5 (a), that he has about 60 Bharanams of land in Dengapadar, his family is well-known there, and that therefore he secured the largest number of votes in that area.

16. However, taking all the circumstances bearing on this point, we are inclined to think that the evidence is not clear and strong enough to give a definite finding that the conduct of respondent No. 1 constitutes bribery or even undue influence under which it falls more appropriately on the facts of this case within the meaning of Sec. 123 of the Representation of the People Act, although as stated above, the circumstances are sufficient to arouse our suspicion and in the circumstances we give the advantage of the circumstances to respondent No. 1.

17. Item No. II of Schedule A.—This item relates to the license obtained by the 2nd respondent Sri Gourahari Behera to run his cinema temporarily for 15 days from 18-12-1951. The petitioner

case is that respondent No. 2 had invested an amount of Rs. 40,000 in the cinema at Russelkonda, that the running of the cinema had been stopped for want of a license for about a year prior to the election, that while matters stood thus in December 1951, Sri Biswanath Das, a candidate for the Parliamentary Constituency which includes the Russelkonda Assembly Constituency and the 1st respondent who were mutually working each as the agent for the other undertook the 1st respondent on 8-12-1951 at Nettanga and subsequently Sri Biswanath Das subsequently—to use their influence for getting again a license for running the said cinema of respondent No. 2 on condition that the latter should withdraw from contest and support Sri Biswanath Das and the 1st respondent, both Congress sponsored candidates, the former for the House of the People and the latter for the Orissa Assembly. That accordingly a license was given for the running of cinema on 18-12-1951 and the said 2nd respondent withdrew from contesting the election and supported Sri Biswanath Das and the 1st respondent in it. In reply to the above said accusation, respondent No. 1 in paragraph 12 of his counter states that the allegations made by the petitioner are absolutely false and baseless, that the licenses are granted by the District Magistrate in case all the conditions laid down in the concerned Act and Rules are satisfied and that neither Sri Biswanath Das nor respondent No. 1 have given any undertaking on 8-12-1951 or at any other time to Sri Gourahari Behera to secure a license for him or used any such influence to secure any license for him nor induced him to withdraw from contest in the election and support them. He adds that respondent No. 2 withdrew from the contest of his own accord after having found the general trend of voters in the constituency and realising that it was futile for him to contest. Respondent No. 2 in his counter supports this case of respondent No. 1.

18. The evidence on this point is both oral and documentary. This point consists of two aspects viz., first, that respondent No. 2 virtually withdrew from the contest at a late stage of December 1951, turned round and supported the cause of the Congress and its candidate Sri Biswanath Das and respondent No. 1 in the election and (2) that respondent No. 1 gave an undertaking to respondent No. 2 and induced him to withdraw on the understanding that he would help him to obtain a license and he actually did so help him in obtaining the license.

19. With regard to the first aspect stated above, Ex. 11 and 11-a, two handbills issued under the signature of respondent No. 2 in December 1951 and certain other facts and circumstances stated below leave no room for doubt that respondent No. 2 did change front and even though he got himself nominated as an independent candidate at first and on 15-11-1951 the non-Congress candidates at the election for the Russelkonda constituency held a meeting in respondent No. 2's cinema hall at Russelkonda to devise ways and means for defeating the Congress and concentrating all their support of one candidate out of them, yet shortly thereafter we find respondent No. 2 suddenly changing side and appearing in a different role and issuing Ex. 11 and 11-a exhorting people to support the Congress candidates and speaking high of the Congress while a short time before he was condemning the Congress. Ex. 11 and 11-a are two appeals made by respondent No. 2 to the people to vote for the Congress candidates and strengthen the hands of Congress. Ex. 11 (2) is signed by respondent No. 2 as President of the Burma Evacuees Relief Committee. The evidence of P.W. 23, the owner of the Asoka Press at Russelkonda, shows that one Khetramani Panda, a Congress worker and friend of respondent No. 1 and member of the District Board, sent the manuscript of Ex. 11-1 to his press for print and that the bill for printing the same was paid by the said Khetramani Panda. P.W. 23 does not say that either Khetramani Panda personally handed over the manuscript Ex. 11-1 to him or paid the amount of the bill Ex. 21 to him but his evidence is that Khetramani Panda had issued general instructions in person to him to print all papers sent by him and send the bills to him at the Congress office, Russelkonda and accordingly the manuscript was sent by Khetramani to him through somebody and therefore he got it printed and collected the amount from the office of Khetramani Panda. He admits that he did not maintain an order book which might show the name of the person who placed the order for the print. He says that the manuscript is written by Khetramani Panda himself. We do not entertain much doubt regarding the fact that this manuscript was sent by Khetramani Panda to P.W. 23 for print and the bill was paid by him. The said Khetramani Panda though cited by respondent No. 1 in his list of witnesses to be examined and although at one stage before the close of the evidence the point was raised with regard to his examination the 1st respondent did not choose to examine him. Neither respondent No. 2 did choose to come to the box to refute the insinuations made against his conduct in the evidence given by the petitioner in the case nor did respondent No. 1 choose to examine him to substantiate his contention with regard to him. In the circumstances stated above, we are inclined to believe that respondent No. 2 was induced to desist from contest, turned round and supported the Congress by reason of some circumstances other than the purely philanthropic object of supporting the just cause of the Congress.

20. But we have to consider whether this change of front was due to any understanding between the Congress worker interested in the constituency and respondent No. 2 and the result of a help promised to him by them for having the license of his cinema renewed. We have further to consider whether respondent No. 1 gave such an undertaking to him and was responsible for obtaining the license. The petitioner has examined four witnesses to connect respondent No. 1 with the obtaining of the license by respondent No. 2. The evidence of these witnesses is that about the second week of December while the District Magistrate of Ganjam was camping at Russelkonda some of the villagers of Russelkonda and the neighbourhood who were interested

in the cinema got up a petition to the District Magistrate Ex. 12 dated 13-12-51 and respondent No. 2 accompanied by the above witnesses and about 10 others approached the District Magistrate who was then sitting at the Revenue Divisional Officer's office at Russelkonda. They say that they went to the place with Ex. 12 and respondent No. 1 was sitting at the time with the District Magistrate and they handed over Ex. 12 to respondent No. 1 who in his turn handed it over to the District Magistrate and that the latter after receiving Ex. 12 promised to look into the matter. The said application is dated 13-12-1951 and on the application there is an endorsement made by the District Magistrate on 15-12-1951 directing his office to put it up before him on 18-12-1951 for dictation evidently meaning thereby that he would pass some order thereon on that date. The above said incident has not been mentioned in the particulars set forth by the petitioner in item No. 11 of schedule A wherein he was careful enough to state other details such as the fact that the 1st respondent on 8-12-1951 at Nettanga and subsequently and Sri Biswanath Das subsequently undertook to use their influence for getting a license for running the said cinema. It is contended by the learned advocate for the petitioner that the incident spoken to by P.W.s. 15, 16, 17 and 20 is a matter of evidence and need not have been mentioned in the list of particulars. We do not agree with his contention and feel that he would not have failed to mention such an important factor of the evidence if he knew it before or if it was a fact. We are disposed to believe that this incident is a later development in the case and the evidence of the above-mentioned P. Ws. has been got up. An examination of the evidence of the abovesaid witnesses further does not carry much conviction to us. P.W. 15 is a man of the same caste as the petitioner and is a signatory of Ex. 12. He says that the respondent No. 1 was sitting at the Revenue Divisional Officer's office and he handed over Ex. 12 to the District Magistrate in the second week of December 1951. He could not say who was the writer of the petition. He tells us that respondent No. 2 informed him that he had been assured of the license by respondent No. 1 and Sri B. N. Das. He denies that his nephew Narasinh Subudhi was the Polling agent of the petitioner and says that respondent No. 2 has confidence on him and so he took him to the District Magistrate. He says that respondent No. 1 did not tell anything to the District Magistrate when he handed over the petition to him. He has now changed side and is giving evidence for the petitioner and it is not known for what reasons he has given up respondent No. 2. P.W. 16 is similarly another turn-coat, a Kabiraj at Russelkonda and gives out a different version by saying that he saw the District Magistrate at the Revenue Divisional Officer's quarters, but not in the Revenue Divisional Officers' office. He is a signatory to the petition Ex. 12 like P.W. 15. P.W. 17 is a man of Kamagada and he is the brother of respondent No. 2's wife and one of the directors of a cinema at Russelkonda. It is similarly not known under what circumstances he has changed side and is figuring as a witness for the petitioner, and we are not inclined to believe the evidence of this witness either. P.W. 20 is a Karanam of village Udhra. He was at first a resident of Ingnati, respondent No. 2's village. He is not interested in the cinema either as a visitor or as a share-holder and it is not known why respondent No. 2 could have asked him to come to his village four miles off from Russelkonda and join the deputation. This witness is an omnibus witness speaking regarding the cinema, the wall-posters and other illegal practices. He was a teacher in the elementary school under the District Board and retired in 1949 and it is suggested in cross examination that he was called upon by respondent No. 1 to explain why he applied for the post of a Karanam while he was serving as a teacher in the District Board although he denies it. He is not able to say who else were present with the District Magistrate at the time of the incident nor can he say who are the signatories to Ex. 12 and says that he did not inform anybody about the incident. He was removed from the post of a Sub-Post Master as he made wrong payment in one case. We do not believe the evidence of this witness as well. The oral evidence regarding this incident is rather awkward.

21. The case of the petitioner is that Sri Biswanath Das and respondent No. 1 promised to help respondent No. 2 to obtain a license and won him over to their side. Sri Biswanath Das is not a party to this proceeding nor is there any evidence to show whether or not he played any part in this affair and it would not be fair for us to speculate on his participation, if any in the matter. The evidence directly connecting respondent No. 1 with the obtaining of the license by respondent No. 2 for his cinema is not convincing. It is quite probable that there are other persons interested in the candidature of respondent No. 1 and the Congress and some invisible hand circumstance of which there is no material before us to judge might have helped respondent No. 2 to obtain the license or to make him support the congress and respondent No. 1 derived the benefit thereof. It is difficult to believe that the District Magistrate was privy to any such affair. The license granted by the District Magistrate on 18-12-1951 under Ex. 17-h shows that on the same date he gave temporary license not only to the cinema in question but also to three other cinemas in the district and for aught we know he may have done it as a matter of general policy to encourage the proprietors of the companies and put up better structures in the meanwhile as he had previously refused to issue license to them on the ground that they did not have pucca structures for running the cinemas. In the circumstances stated above, we are unable to find that the accusations made against respondent No. 1 under this item by the petitioner has been established against respondent No. 1.

22. As already stated above, the other allegations and accusations made against respondent No. 1 under this issue are not of material importance and have not been seriously pressed at the argument and we therefore refrain from discussing the same. Most of the allegations made in

schedule A are that respondent No. 1 went round some villages and offered bribes of about Rs. 100 to some of the villagers for the purpose of doing some work for the common benefit of the villagers and that it was accepted in some places while at other places money was not accepted. The oral evidence adduced on these offers of payment is far from satisfactory and we do not believe it. We accordingly find that the petitioner has failed to prove that the election of respondent No. 1 has been procured or induced or the result of the election has been materially affected by any corrupt or illegal practice or that any corrupt practice specified in sec. 123 of the Act has been committed by respondent No. 1 or his agent or by any other person with his or his agents' connivance.

23. *Issue No. 2.*—The allegations made in schedule C has not been seriously pressed by the petitioner's advocate. In schedule D it is stated that the printer's and publisher's names were not given in the wall posters and pamphlets—Ex. 10, 11, 11-a, 18 and 20 and Ex. 9-a wall-poster. These are said to be illegal practices and it is frankly admitted by the petitioner's learned advocate that the illegal practices are of such a nature that even if believed, they do not carry us far to invalidate the election of respondent No. 1. We do not therefore attach much importance to this issue. There is no evidence that respondent No. 1 printed Ex. 11-a. This has been issued by respondent No. 2 Ex. 10 is the rendering of Ex. 10-a into Oriya and is said to have been issued by the Provincial Congress Committee. Ex. 10-a was issued by the Provincial Congress Committee and it is said that 30 copies of Ex. 10 were issued only to the workers for their guidance. Ex. 9 is a poster in the name of respondent No. 1 and his symbol and a request to cast the ballot papers in his box. The omission of the name of the printer and publisher by respondent No. 1 in Ex. 9 is not serious. Respondent No. 1 says Ex. 20 was not issued by him and there is no evidence of his having printed the same. Thus this issue is answered in the negative.

24. *Issues Nos. 3 and 4.*—The allegations against respondent No. 8 may be classified under two heads : that in his capacity as the Returning Officer in charge of the election for the constituency in question he had permitted certain irregularities to exist during the *conduct of the elections* as set forth in schedules E and F and paragraph 1 of schedule G and thereby his wilful conduct had rendered the return of the 1st respondent possible and secondly he had committed similar irregularities at the *time of counting* as detailed under schedule G and thus had wilfully reduced the number of votes obtained by the petitioner and had declared respondent No. 1 duly elected by a majority of 300 votes over those of the petitioner. Every one of these allegations was denied both by the respondents 8 and 1 and they urged that respondent No. 8 had performed his public duties by ensuring a fair election in strict accordance with the rules.

25. It may be said at the outset that nominations of candidates were filed from 1st to 10th November, 1951, that polling was conducted on the 9th, 10th, 11th, 12th and 13th of January 1952 at eight different places and that for each of the seven candidates there were 56 ballot boxes and that the counting was done at Russelkonda on 24-1-1952 and the result announced at about 5-30 P.M. on that day when respondent No. 1 was declared elected having secured 300 votes more than the petitioner. Besides the mal-practices such as corruption and undue influence alleged against respondent No. 1, the petitioner claims that certain wilful defects and acts of commission and omission on the part of respondent No. 8 both during polling and again at the counting, had equally affected the result of the election and that respondent No. 8 had perpetrated them and therefore he claims to have him impleaded as respondent No. 8 as a party to these proceedings on account of his misdeeds. It is therefore necessary to appraise as to how far he has succeeded in his aspersions which are totally denied.

26. Thus the first stage during which the irregularities and the mal-practices were allowed to occur was at the time of the poll between 9th to 13th January 1952. It is admitted that there were 8 Polling Stations with 16 booths wherein polling was conducted on different and varying number of days so that each candidate had votes contained in 56 ballot boxes in all. The first charge mentioned in Sch. E is that the ballot papers issued at the election were not marked with any official seal or sign and the second objection was mentioned in schedule F wherein it was stated that the polling officers in charge of the ballot papers under instructions from the Returning Officer used to note when issuing ballot papers to the voters respectively, the number on the ballot papers against the respective names of the voters in the voter's list. This is claimed to be in violation of the rules and was also spoken to by the petitioner as C 7s 10 and P.Ws. 11 and 12, who were his polling agents. It is pointed out for the respondent that the first objection is not tenable. Rule 20 Sub. Cl. (1) gives the discretion to the Election Commission to direct that before any ballot paper is delivered to an elector at a polling station it shall be marked with such official mark as may be specified by the Election Commission in this behalf. It is not alleged that any such direction had been issued to affix any sign or seal. Again Rule 23 Sub Rule (2) enjoins that the Polling Officer shall at the time of delivery of the ballot paper place against the serial number of the elector in the electoral roll a mark to denote that the elector has received a ballot paper and shall also keep a record of the serial number or numbers of the ballot papers supplied to the elector in such manner as the Returning Officer may subject to instructions issued in that behalf direct. Rule 28 requires that the ballot paper to be used for the purpose of voting shall contain a serial number and such distinguishing marks as the election Commission may decide. It was pointed out by the petitioner's lawyer that Rules 32 and 33 require that soon after each day's poll returns under Form No. 9 and 10 should be prepared by the Presiding Officer and that the latter should contain at least six items of information : (1) the number o

ballot papers received at the polling station or at each booth, (2) total number of ballot papers received by the Presiding Officer if there is more than one booth, (3) number of unused ballot papers returned, (4) number of ballot papers cancelled, (5) number of tendered ballot papers used, and (6) number of ballot papers in the ballot boxes. It is further alleged that according to Rule 32, the ballot boxes as well as the account under No. 10 prepared according to Rule 33 should be sent after the close of the poll *each day* to the Returning Officer from each polling booth and station. Again under Rule 34 it is claimed that the Returning Officer shall make adequate arrangement for the safe transport of all ballot boxes, packets and other papers referred to in Rule 32 and for their safe custody until the commencement of the counting of votes. It is claimed for the petitioner that he later came to know of several irregularities having been committed against this procedure. Thus the learned advocate for the petitioner pointed out that the No. 10 Form was not at all strictly adhered to and several attempts were made from the material on record to lull out what had actually happened. It was shown that even the final account furnished by respondent No. 8's advocate would show (1) that the number of ballot papers unused were not sealed and sent away at the close of each day in several polling stations, thus at Belaguntha on the 4th day so also at the third station Balipadar it was sent only on the 11th and not on the other four days i.e., 9th, 10th, 12th and 13th and that even on the last day they were returned separately without being shown in No. 10 account not only for booth No. 1 but for Nos. 2 and 3 of the same polling station. Again at Mujagada they were not sent on the 9th and 10th for both booths Nos. 1 and 2. The same things also happened at Hattiguda on both 9th and 10th. It is claimed for the petitioner that as this peremptory procedure was not followed there was every possibility for such unused ballot papers being utilised irresponsibly in favour of any candidate either on the date of polling before the ballot boxes were sealed and despatched and much more conveniently by putting such ballot papers into the ballot boxes on the next day even through voters. The learned advocate for respondent No. 8 urges that a new series of ballot papers were being started on the next day and that therefore any such appropriation or misuser of the prior day's ballot papers can be easily detected by a reference to the numbers printed on each ballot paper. But as was well pointed out for the other side, there could be no possibility of verifying whether the ballot papers issued on the previous day or on that particular day are being found in the ballot boxes and nobody could also suspect of any such mischief having been perpetrated. It is also to be seen that there is a *lacuna even in the rules* which does not require a total being prepared of the number of voters that had actually exercised their franchise on the strength of the voters' list so that the same may be compared with the number of ballot papers issued on any day. As against this, there is the evidence for respondent No. 8 and also for respondent No. 1 that the sealing of all the ballot boxes and of the unused ballot papers had been done and secured properly even though some of the ballot papers were not sent away each day. This was spoken to by R.W. 1 for the 8th respondent who was the Presiding Officer at Mujagada for all the three days. There is also no whisper or suggestion from the petitioner that any such mischief had been perpetrated except the possibility of such an occurrence. It is stated that besides sending away the consolidated account of the ballot papers, received, used and returned he had prepared a separate account marked as Ex. AA. Witness No. 2 for respondent No. 8 is an election clerk who explained the procedure followed in the election that every day as per the programme, the ballot papers were used to be issued to the respective Presiding Officers of the respective stations and that every day unused ballot papers and sealed covers containing challenged ballot papers and marked copies of electoral rolls were being received at the head-office and owing to difficulties of communication such accounts came at the end of polling in certain cases and all ballot boxes were being sealed and sent daily under police escort. Again, he filed the unused ballot papers of booth No. 1 of Mujagada which were received back by the office on a later date. What all the advocate for the petitioner could show was that the unused ballot papers of Mujagada were not received as per Ex. 13 for 13-1-52 but the same had been filed by witness No. 2 for respondent No. 2 while in the box.

27. The further objection taken for the petitioner is with reference to the irregularities alleged to have occurred at the time of counting. Thus it is claimed that when there were 56 boxes to be counted only two counting agents were allowed besides himself who could not possibly cope with the counting of the various boxes by several clerks and that there was no scope afforded for any check to safeguard correct counting or verification of his own votes and that they were not even permitted to verify whether the seals on all the ballot boxes were in tact but were permitted to verify only by checking two boxes and that the rest of the boxes were placed one over the other-pell-mell. Again it is alleged that they were not permitted either to be present at the check or verify the counting of the ballot papers of any of the other candidates and finally that the Returning Officer had spent over one hour towards the end before making any announcement of the result at 5-30 in the evening which had created great suspicion and that when the petitioner had asked for a copy of the No. 14 and 16 account thereafter each day, he was not furnished with the same. Hence it is alleged that he had occasion to send a wire and petition to the Election Commission on the 28th. He spoke about the same also in the box and explained that the shortage in each of the 28 boxes mentioned in schedule G was arrived at by him from the notes kept by himself and his two counting agents which he had not cared to file although he had got them with him at home. Again, he stated that he could arrive at the differences in the ballot papers given out in schedule G paragraph 2 by a comparison with the No. 14 account which he had subsequently obtained. The utmost that can be stated in favour of the petitioner is that the ballot papers were being counted

and bundled up into hundreds as was spoken to by P.Ws. 10, 11 and 12 and also admitted by witness No. 1 for respondent No. 8. Respondent No. 8 as R.W. 4 could not deny the fact of bundling in hundreds though the same has been denied by respondent No. 1. Witness No. 3 for respondent No. 8 who was in charge of counting on the 24th clearly explained the entire process of counting adopted at the time, stating that the counting agents of the candidates were allowed to examine the boxes kept in different rows after having been brought from the strong room, and that these boxes were brought at one time for each candidate and that another candidate's boxes were brought after the counting of the first was over. Again, the boxes were made over to the clerks in charge of one group and after examination of the boxes by the candidates and their agents they were opened and one box was given to one clerk, that a group of clerks then began counting papers and prepared account slips which were passed on to the officer in charge that the same ballot papers were counted by another set of clerks who prepared their counting slips before the officer in charge of that group, and that each consolidated list and slips were sent to the Returning Officer who verified the totals and if there is difference he ordered counting for a third time. The same procedure was also spoken to by the Returning Officer i.e., respondent No. 8. Both of them have stated that the Returning Officer prepared No. 14 accounts after the counting was over and declared the preliminary results at about 4-30 P.M. of the approximate numbers and that the final result was declared one hour later after the ballot papers received by post were also added to the number of votes obtained by the respective candidates.

28. Thus to recount, the main irregularities that had been pointed out are (A) *At the Polling*, (i) the unused ballot papers not being sent over to the Returning Officer at the end of each day as was required by Rules 33 and 34. (ii) that such unused ballot papers were not at all sent from Mujagada on 11-1-1952 as per the communication (Ex. 22-a) sent to him and (B) *at the counting* (i) that he was not permitted to examine the seals on each ballot box and (ii) that he was allowed only two counting agents and not more (iii) that none of them was permitted to be present when the boxes of the other candidates were counted and that (iv) that there was no possibility of his verifying whether the No. 10 account which contained the results of the polling had tallied with the result of the counting as per No. 14 account and that respondent No. 8 could have manipulated figures as he liked in No. 16 account containing the total number of votes secured by each candidate.

29. Respondent No. 8 had clearly explained and defended his actions by stating in the box that explanations had been called for from the Polling Officers for non-despatch as was spoken to by witness No. 2 for the 8th respondent the clerk in charge of election and that he was also receiving varying communications from the Deputy Electoral Officer, Orissa, based on experience from other Polling centres and some Polling Officers too had received slightly varying instructions at earlier centres of polling where they had functioned. Again it is stated that all the unused ballot papers including those from Mujagada as per Ex. 22-a had been received and filed and that there could be no further suspicion. Likewise it is pointed out that Sec. 64 had given scope for the candidate and his election agent and counting agent to be present at the counting and no others and that he did not prevent any one of them from being present at the counting of other boxes. Finally he stated that he had been scrupulously careful in scrutinizing the verification of account submitted by the Presiding Officers required by Rule 49. Finally, he deposited in the box that although he did not check separately each day's No. 10 account with No. 14 account there was automatic check of the two from the totals. This assertion not only establishes beyond doubt that no serious departure from the rules had occurred either in the process of polling or in the counting and that there could have been no possibility of any such having affected the result of the election to any material extent. Again, with reference to any partiality or misconduct on the part of respondent No. 8, the less said the better, in as much as the petitioner who had tried to support it from the figures given in Appendix G (2) did not care to file the counting slips of his agents and had not included them in his petition to the Election Commission dated 28-1-1952 when he raised objection at the earliest opportunity. Finally he had himself to admit that these aspersions were based on doubts and are nothing short of a figment of his imagination. Hence, we hold that none of these allegations has been made out.

30. *Issue No. 5.*—In view of the findings on issues 1 to 4, we hold that the result of the election has not been materially affected.

31. *Issue No. 6.*—This issue is not pressed.

32. *Issue No. 7.*—In view of the findings on issues Nos. 1 to 4, the election of respondent No. 1 is held not void.

33. *Issue No. 8.*—For the same reasons, the petitioner is not entitled to a declaration that he has been duly elected.

34. *Issue No. 9.*—This issue is not pressed. We hold that the petition is in time.

35. *Issue No. 10.*—The petition is not bad for misjoinder of causes of action or parties as indicated in our Interlocutory Order, dated 16-12-1952.

36. *Issue No. 11.*—This issue does not arise in view of the findings on issues Nos. 3 and 4 above.

37. Issue No. 12.—We therefore direct that this petition be dismissed. We further direct that the petitioner do pay Rs. 250 to respondent No. 8 towards his costs on account of his having impleaded him without sufficient cause and having made serious allegations against a public servant without any basis. We further direct respondent No. 1 to bear his own costs in the circumstances of the case and the findings recorded above under issue No. 1.

Dictated to the shorthand writer and pronounced in open Court this 31st day of March, 1953.

(Sd.) D. N. DAS, *Chairman,*

Election Tribunal.

(Sd.) G. KRISHNAMURTI, *Members*

(Sd.) RAMAKRISHNA RATHO, *Members.*

Witnesses Examined

FOR THE PETITIONER :

- P.W. 1. Basudeb Khadanga.
2. Haribandhu Khadanga.
3. Dandasi Dakua.
4. Dulia Raut.
5. Raghuban Nath Raut.
6. Markanda Swain.
7. Muli Bisoyi.
8. Ananta Sahu.
9. Bhanu Bhatai.
10. A. Gangadhar Patra.
11. Surendranath Panda.
12. K. Kotesu Patra.
13. Ladukcswar Pati.
14. Syamaghana Tripathi.
15. K. Suryanarayana Subudhi.
16. Ballabhanarayana Panda.
17. Ganesh Mahanti.
18. Purushottam Patnaik.
19. Bhagaban Panda.
20. Natabar Patnaik.
21. K. Kasi Patra.
22. Ch. Srirangam Patra.
23. Dandapani Gouda.

FOR RESPONDENT No. 1 :

1. Mohan Panda.
2. A. Ballayya Patra.
3. Dinabandhu Panda.
4. Dr. A. S. Patnaik.
5. Lingarej Tripathi.
6. Baidyanath Patnaik.
7. Dinabandhu Behera.
8. Karji Bairagi Naik.
9. Juhdistira Raut.

FOR RESPONDENT No. 8:

1. P. Appala Narasimham.
2. Kesab Patra.
3. Arjun Satapasti.
4. R. Venkataramana.

Documents marked

FOR THE PETITIONER :

- Ex. 1. The cash book of the District Board, Ganjam, from 28-3-52 to 12-6-52.
2. Register of contingent and other similar charges from 1-4-51 to 10-1-53.
3. Discretionary Grant file for 1951-52.
4. Order dated 3-4-51 removing Sri Sahadeb Swain from service.
5. Mercy Petition of Sahadeb Swain dated 30-9-1951 with orders of the President thereon dated 1-10-1951.
- 5-a. Office note and order of appointment of Sahadeb Swain as a teacher.
6. Appointment order of Sahadeb Swain dated 6-1-52.
7. The petition dated 1-2-52 of Badakadanda Harijans for a well.
8. Order dated 20-2-1952 passed on the Mahajaur petition of Badakadanda Harijans.
9. A wall-poster of Respondent No. I.
10. A printed pamphlet under the head 'Congress Nirbachan Istahar.'
11. A printed handbill dated 28-12-51 by Res-2 Gourahari Behera.
- 11-I. The original of Ex. II.
- 11-a. A printed hand bill dated nil by the abovesaid Gourahari Behera.
12. Representation of the people of Russelkonda to the Collector, Ganjam for granting a license for the Rayat Cinema.
13. No. 10 Account of Russelkonda Constituency.
- 14 to 14-f. No. 14 account of all the candidates in the Russelkonda Constituency.
- 15 to 15-f. No. 14-A Account of all 7 candidates.
16. No. 16 account of all the 7 candidates of Russelkonda Constituency.
- 17 to 17-h. The correspondence regarding grant of license to the Rayat Cinema, Russelkonda.
18. The printed pamphlet of Dinabandhu Behera.
19. Nine printed questions to Dinabandhu Behera (R-1).
20. Printed Pamphlets by Gourahari Mahanti dated 5-1-52 as answer to questions of Sahani.
21. The bill dated 2-1-52 for Rs.7-8-0 of Asoka Press, Bejiput.
- 22 and 22-a. The correspondence regarding grant of copies of No. 10 account to A. Gangadhar Patra (Petitioner).

FOR RESPONDENT NO. II :

- A. The application of A. Gangadhar Patra dated 28-1-52 to the Election Commission, Delhi.
- B. The telegram dated 28-1-52 sent by A. Gangadhar Patra to the Election Officer, Ganjam.
- C. The letter dated 20-8-1951 from A. Gangadhar Patra to the Secretary, Utkal Provincial Congress Committee.
- D. The letter dated 10-9-1951 from A. Gangadhar Patra to the Secretary, U.P.C.C.
- E. The appeal of Sri A. Gangadhar Patra dated 11-10-51 to the Central Election Commission, New Delhi.
- F. The Mahajaur petition dated 17-9-51 sent to the Secretary, U.P.C.C.
- G. The Mahajaur petition dated 8-9-51 sent to the Secretary, Utkal P.C.C.
- G-1. The Mahajaur petition dated 5-9-51 sent to the General Secretary, P.C.C.
- H. The certificate of the presiding officer of Durgaprasad Polling Station dated 9-1-52.
- J. The memo of work done in Ghumsur Taluk.
- K. The petition of Chadhiapalli villagers dated 31-10-1951.
- K-1. The endorsement dated 31-10-51 by the President dated Board on Ex. K.
- K-2. The communication of District Board for construction road to Chadhiapalli.
- K-3. The undertaking of people to pay Rs. 480 dated 20-12-51.
- K-4. The undertaking of two villagers dated 20-12-51.
- K-5. The order containing the list of discretionary grant.
- L. The work estimate of the village Road to Chadhiapalli.

FOR RESPONDENT NO. 8 :

- A-A. The ballot paper account (rough copy) kept by the presiding officer of Rajagada Polling Station.
- B-B. List of ballot papers sent to different Polling stations of Russelkonda Constituency.
- C-C. The sketch map of the hall where counting took place.
- D-D. The sheet of paper in which the number of votes obtained by candidates are noted by the Returning Officer.
- E-D-I. Fair copies of Ex. D-D.
- E-E. Note made under Acct. No. 10 dated 13-1-52 in respect of Booth No. 1 of Bellaguntha Police Station.
- F-F. The note made under Acct. No. 10 of the last day in respect of Booth No. 1 of Nettanga Police Station.
- F-F-I. Ditto ditto in respect of booth No. 2.
- G-G. The press note in respect of the results of Russelkonda Constituency dated 24-1-1952.

(Sd.) D. N. DAS, *Chairman,*
Election Tribunal.

31-3-53

(Sd.) G. KRISHNA MURTI, *Member.*

(Sd.) RAMAKRISHNA RATHO, *Member.*

[No. 19/146/52-Elcc. III/4511.]

By Order,
P. R. KRISHNAMURTHY, Asstt. Secy.

